

41/5.C.36

THE
C A S E
O F

Mr. Greenshields,

Fully Stated and Discus'd,

I N A
L E T T E R

FROM A

COMMONER of *North Britain*,

T O

An English P E E R.

L O N D O N: Printed in the Y E A R, M D C C X I.

RETTIGER

Commoner of Lamp Binnin

RETTIGER



1770 A.D. Binnin

THE
 C A S E
 O F
 Mr. *Greenshields*,
 Fully Stated and Discussed, &c.

MY LORD,

SEEING your Lordship is to sit in Judgment on a Cause of Weight and Moment, that is brought before you by way of Appeal from the Courts of Judicature in *Scotland*, I know your Lordship's natural Propensity to Justice will sufficiently dispose you to receive kindly whatever Information may be of use to set a Matter of this Importance in its true Light. And therefore I have presumed, upon the Honour I have of your Lordship's Acquaintance, to lay this Matter before you in all its Consequences.

This Cause, MY LORD, will appear to you to have something new and singular in it, as being the first of the kind, that, I believe, has been ever brought before that August Tribunal, of which your Lordship is so great an Ornament. To see a Clergy-man standing at the Bar of your House, imploring your Lordships Justice and Protection, against a Sentence of Imprisonment, inflicted for no other alledged Crime, but that of reading the *English* Liturgy in an Assembly of *Christians*, devoutly met together to offer up their joint Prayers and Praises unto

unto God, is a Sight that your Lordships have been hitherto unacquainted with. Had this Sentence been the Result of a *Popish* Inquisition, under a *Popish* Government, it would have been no more than what we should have had reason to expect from Persons whose avowed Principle it is, not to tolerate any who dissent from the Communion of the *Church of Rome*. But the Severity Mr. *Greenshields* complains of, is the Act of *Protestants*, living under the benign Influence of her Majesty's Government; who, notwithstanding that by far the greatest Part of the Inhabitants of this United Kingdom are true Members of the *Church of England*, and that the *Presbyterians* are tolerated in *England* and *Ireland*, with the greatest Clemency and Indulgence, yet wherever they have any Power or Influence, raise a Persecution against all those who are Sons and Disciples of the *Church of England*. In *England*, where the Liberty which Dissenters enjoy depends wholly on the Good Will and Pleasure of those who are Members of the Church, the Cry of the *Presbyterians* is for *Moderation, Toleration, Indulgence to Fellow-Christians, Ease to tender Consciences*. But here in *Scotland*, where the *Presbyterians* have got the Power into their own Hands, they openly declare all Indulgence to Persons that differ from them, to be utterly Unlawful and Sinful; it is, as they term it, *Establishing Iniquity by a Law*.

How far our *Presbyterians* of *Scotland* are directed and influenced in this Matter by their Brethren in *England*, I shall not pretend to determine; but that there has all along pass'd a close and intimate Correspondence between them, and that they have been always zealous in supporting one another's Interest, I think will not be called in question by any who are the least acquainted with the History of these Kingdoms. And I shall leave it to your Lordship to judge, what Addition of Strength the Dissenters in *England* may hope to acquire to their Interest and Party, if their Brethren of *Scotland* can do them that Service, to crush and extirpate all those in the *Northern* Parts, who still adhere to the *Episcopal* Communion, and are Favourers of the Constitution of the *Church of England*. I must needs say, **M Y L O R D**, that this obstinate Perseverance of the *Presbyterians* of this Island in their Opposition and Aversion to the *Church of England*, notwithstanding the Clemency and Indulgence she uses towards them, notwithstanding her Readiness to embrace

embrace them into her Communion without-stretched Arms, argues a most implacable Temper in them, and is a strong and convincing Argument, that their Separation from her Worship is grounded more on Humour and Prejudice, than on any real Scruple of Conscience. What else can we infer, M Y L O R D, from their Conduct in continuing to seduce People from the Communion of the Church in *England*, and to persecute her Sons and Disciples in *Scotland*; while the Reformed Churches abroad, whose Model they pretend to copy after, are declaring their Resolutions to unite more strictly with the *Church of England*, while they are getting her Liturgy translated into their several Languages, while the *Dutch* suffer it to be read in the *English* Congregations in some of their most trading Towns; while the Clergy of *Geneva* signify their Inclination to have it, or the like Form of Prayer, established in their Churches; while they declare their Approbation of the Manner of Worship in the *Church of England*, of the Government of the *English Church*, and condemn all that separate from its Communion as Schismatics. And yet notwithstanding of this good Example shewn them by the Reformed in Foreign Parts, our *Presbyterians* not only go on pertinaciously in their Separation; but wherever they have Power, do persecute those who pretend to worship God according to the Form prescribed by the *Church of England*.

My L O R D, I must beg your Lordship to take notice, that the Case you have now before you, is not the Case of Mr. *Greenshields* alone, but is the concern of all the Clergy and Laity of the Episcopal Communion in *Scotland*; And therefore deserves your Lordship's more particular Care and Attention. For by a prudent Regulation and Settlement of this Matter, your House may in a great Measure remove the grounds of Discontent in this part of the United Kingdom, may ease the Minds of the People, and confirm them more and more in their Duty and Affection to her Majesty's Government.

My L O R D, ever since the late Revolution, the Episcopal Party of *Scotland* have been represented at Court as Enemies to the Revolution, and disaffected to the present Establishment. And for the first Years of his late Majesty's Reign, I cannot say that this Assertion was altogether groundless; but I can at the same

same time positively averr, that the general Discontent which appeared in *Scotland* under the late Government, was chiefly owing to the Cruelties and Barbarities committed by the Presbyterians on the Episcopal Clergy, and to the evil Counsels which their Emissaries gave to his late Majesty King *William*, in relation to the Affairs of *Scotland*. For however great and good the effects have been which the Revolution produced in *England*; yet it cannot be denied, My *Lord*, and I am sorry I should have occasion to say it, that its Consequences with us in *Scotland*, did, by the influence of evil Counsellours, prove fatal to our Constitution both in Church and State. In *England*, the Revolution deliver'd the Church out of the Jaws of Popery, confirmed her Bishops and Clergy in the peaceable possession of their Benefices, and secured to all its Members the free Exercise of their Worship; the Constitution of the *English* Government, the Liberty and Property of the Subject, were thereby happily preserved against the Encroachments and Innovations of an Arbitrary self-delighting Ministry.

But behold with us in *Scotland*, the Deliverance which we received, was only out of the hands of one Enemy into the merciless Power of another. Our Church was pulled up by the very Roots; and the Frame and Constitution of our Government intirely alter'd. The ancient Apostolical Order of Bishops was abolish'd; and one of the three Estates of Parliament totally cashier'd. The Episcopal Ministers were in a very summary way turned out of their Churches; some of them, for not praying for their late Majesties by the Name of King and Queen of *Scotland*, before any Law was enacted to declare them such, and even before their Majesties had accepted of the Tender of the Crown. When they desired of the Convention of Estates, that the same Indulgence of Time might be allowed them to consider of a matter of this Importance; as had been granted to the Clergy of *England*, it was peremptorily refused; and nothing but a present hasty compliance could save them from Deprivation. Nay even that could not have protected them long; as appeared afterwards by the Proceedings of the Privy Council against all the Episcopal Ministers who were cited to appear before them; whom they turned out promiscuously, without making any distinction between those who scrupled, and those who offered to comply with the Civil Government.

And

And because this Judicial way of proceeding against the Clergy did not appear to be expeditious enough to make way for the Presbyterian Teachers to get Possession of the Churches, the Rabble was let loose upon them in such parts of the Kingdom, where the Dissenters had most successfully improved the Indulgence granted them by the late King *James*, in training up their Disciples in the Principles of Rebellion and Sedition. The Rabble being thus egg'd on and countenanced by the Men then in Power, executed the most outragious cruelties and barbarities upon all the Clergy in the Western Parts, turning them out of their Houses with their Wives and Children, despoiling them of their Goods, beating and abusing their Persons, and putting even some to Death. When the poor Clergy-men who had been thus barbarously used, made application to the Government for Protection, testifying their readiness to pay their Submission to the civil Powers; they were told, that that was not enough, they were Men of a Scandalous Life, and therefore not fit to be restored to the Possession of their Churches; which were to be given to *Men holier than they*.

Could it be expected, MY LORD, that Men under these circumstances would be easily reconciled to a Government, which instead of granting them a Legal Protection for their Persons and Estates, did abandon them in this manner to the fury of their Enemies? I appeal to Your Lordship, if the Ministers who at that time had the Administration of Affairs in *Scotland*, did not do the greatest Disservice imaginable to his late Majesty King *William*, and to the Revolution, by suffering the Presbyterians to make use of it as a handle, to persecute and oppress their Fellow-Subjects? MY LORD, I will not go the Length of some Gentlemen, to lay it down for a Principle, that Protection and Obedience are reciprocal between Prince and People; but I may venture to say, that in Point of Fact it always is so; and that even the best of Subjects are but cool and remiss in their Duty and Affection towards their Prince, when they are not protected in their Civil and Religious Rights. So that your Lordship may see, that whatever Troubles and Confusions have been in *Scotland* since the Revolution, whatever Jealousies and Fears have arisen from the Discontents of the People of this Kingdom; they are all chargeable upon the *Presbyterians*: Who by their violent Proceedings

ceedings against all of the Episcopal Communion, Laity as well as Clergy, have done all that lay in their Power to raise up Enemies to the present Establishment; and Your Lordships have it now in your Power, to put an effectual Stop to this Abuse, and to make all the People Ease for the Future. And that the general Disaffection which appeared to be among the Episcopal Party of *Scotland*, during the last Reign; did not proceed so much from any Aversion to the *Revolution*, as from the cruel Treatment which they Received from the *Presbyterians*, is very Plain, from the Readiness they shewed to Submit to the Government of Her present Majesty, upon her Accession to the Throne. They knew that Her Majesty's tender Care for the Church of *England*, in which she had been Born and Educated, would move her to take the State of the Episcopal Church of *Scotland* into Consideration, and to grant them at least a Liberty to Worship God after the Way of their Fathers. And in Prospect of having Countenance and Protection under the present Reign, the Nobility and Gentry of the Episcopal Communion, who had refused to take the Oaths to the late King *William*, came all of them in heartily and cordially to Swear Allegiance to Her present Majesty,

Having thus laid before Your Lordship the State and Condition of the Episcopal Church of *Scotland* in general, which was absolutely Necessary in the present Debate, seeing the Fate of it depends on the Decision, which the House of Peers shall think fit to give in the Cause now depending before them; I shall proceed to consider Mr. *Greenfield's* Case in particular.

Mr. *Greenfield's* was in the Year 1694. ordained a Presbyter of the Church of *Scotland*, by the late Bishop of *Ross*, according to the Form and Rite of Ordination prescribed in the *Liturgy* of the Church of *England*; which was always made Use of by the Bishops of *Scotland*, in their Ordinations of Priests and Deacons, and Consecrations of Bishops. He soon after went to *Ireland*, where he was provided to a Cure in the Diocese of *Armagh*, which he served for several Years, to the great Edification of the Flock committed to his Charge, and with the Approbation of his Diocesan the Lord Primate of all *Ireland*, and of all his Neighbouring Clergy and Gentry; he having

ving always lived among them in a Manner suitable to his Character, and given constant Proofs of his Loyalty to Her Majesty, and his Conformity to the Establish'd Government, both in Church and State. His Affairs calling him to *Scotland* in the Year 1709. and he receiving here the News, that the Rector for whom he served the Cure in *Ireland* was Dead, resolved to comply with a Request made to him by several Inhabitants of the City of *Edinburgh*, (some of them Natives of *England*, who since the *Union* are Settled here on Account of their Imploymnts in Her Majesty's Service,) that he would Read to them, on *Sundays* and *Festivals*, the Prayers of the Church of *England*.

He had not long Exercised his Ministerial Function in this Manner, when he was called upon by the Presbytery of *Edinburgh*, to give an Account of himself, and of his Presuming at his own Hand, without the Authority of any Judicatory, to Exercise the Office of the Holy Ministry. In Obedience to their Summons he appeared before them, and shewed them his Act of Ordination, which Impowers him to Preach the Gospel, and to Administer the Sacraments. He produced likewise ample Certificates from *Ireland*, of his unblameable Life and Conversation, and of his good Affection to the Queen and her Government. Notwithstanding of all these Qualifications, they Prohibited him to Exercise any Part of his Ministerial Function within their Bounds, and invoked the Assistance of the Magistrates of *Edinburgh* to render their Sentence Effectual.

Mr. *Greenshields* knowing that the Presbytery of *Edinburgh* had no Authority over him, he being none of their Communion, continued to Exercise his Ministry, notwithstanding of their Prohibition to the contrary, Upon this the Magistrates of *Edinburgh* interposed their Authority, and required him to desist from Praying and Preaching upon pain of Imprisonment. Mr. *Greenshields* remonstrated to them, that what he did was no Crime, nor Breach of any Law, Divine or Humane, and consequently not liable to any Punishment. However, they, in pursuance of the Sentence of the Presbytery, committed him to Prison, there to remain, till he should find Surety that he would desist from the Exercise of his Ministry within the City

of *Edinburgh*, and its Liberties, in all time coming, or that he should depart from thence.

Mr. *Greenshields* Petitioned the Lords of Council and Session, for Relief against this severe and illegal Sentence pronounced against him by the Magistrates of *Edinburgh*. They rejected his Petition, and confirmed the Sentence of Imprisonment, not for the Reasons upon which the Magistrates and Presbytery of *Edinburgh* went, but upon a new Ground, *viz.* that he was not a Minister, having been ordained by an Exauctorate Bishop.

The Lords of Council and Session having refused Mr. *Greenshields* the Protection of the Laws against an illegal and unwarrantable Sentence, and they having had recourse to an unprecedented Method to establish the said Sentence; he has been obliged to Appeal to the Justice of the most Honourable House of Peers, of which Your Lordship is a Member, that he may be Protected in the Liberty of his Person, as a Free-born Subject; and in the Exercise of his Ministry, as having a due and lawful Vocation to that Sacred Function.

In Order to prove to Your Lordship, that all the Steps of this Proceeding against Mr. *Greenshields* are Unjust and Illegal, I shall shew in the first Place, that the Reasons, on which the Original Sentence of the Presbytery of *Edinburgh* is Founded, are altogether Groundless: in the next Place, that the Proceedings of the Magistrates of *Edinburgh*, in pursuance of the said Sentence, are an unwarrantable Encroachment on the Liberty and Freedom of the Subject: And thirdly, that the Lords of Council and Session, by refusing their Aid and Protection to a Person Imprisoned contrary to Law, and by having Recourse to an unusual and irregular Practice in confirming the Sentence of Imprisonment against Mr. *Greenshields*, have given him good Ground to Appeal to the Justice of a higher Tribunal.

I shall begin, MY LORD, with the Reasons on which the Ministers of the Presbytery of *Edinburgh* ground their Sentence against Mr. *Greenshields*. And they are these; because he disowned their Authority; because he Exercised his Ministry within their

their Bounds without their Allowance, and because he had introduced a Form of Worship, contrary to the Purity and Uniformity of the Worship of the Church of Scotland Established by Law. As to the Authority which they set up, it is Plain by several Acts of Parliament now in Force in Scotland, that the Presbyterian Ministers have no Manner of Authority or Jurisdiction over those of the Episcopal Communion. When Episcopal Government was Abolished at the Revolution, and the Power put into the Hands of the Presbyterians, they Exercised it in such a despotic and arbitrary Manner, giving no Quarter to any Clergy-Man that would not renounce Episcopacy, that at last the Government, perceiving the general Discontent that was raised in the Kingdom by the Fury of the Presbyterian Party, found it Necessary to Tye up their Hands, and to take under its Protection such of the Episcopal Clergy as the Malice of the Presbyterians had not as yet been able to reach; confirming them in the Possession of their Churches, without obliging them to submit to the Presbyterian Church Government, and requiring no other Compliance of them, but to take the Oaths to the Civil Magistrate. The 27th Act of the Parliament held in Year 1695. is express to this Effect. It is thereby Enacted and Declared, *That all Ministers who shall duly Qualify themselves, by taking the Oath of Allegiance, and subscribing the Assurance, without Imposing upon them the other Qualifications mentioned in the 22d Act of the Parliament held in 1693. with Respect to the Church Government, and Form of Worship, shall have the Government's Protection, as to their Kirk's, Benefices and Stipends.* This is the Sum and Substance of the Act. The Qualifications said to be mentioned in the 22d Act of the Parliament held in the Year 1693. from which the Ministers of the Episcopal Communion are exempted by the forementioned 27th Act of the Parliament held in the Year 1695. are these, *the subscribing the Confession of Faith, the owning and acknowledging the present Government of the Church of Scotland, and the observing the same Uniformity of Worship that the present Government does enjoin and Practice.* Can any thing be more directly opposite to the Words of the Law, than the reasons assigned by the Ministers of the Presbytery of Edinburgh, in their Sentence against Mr. Green-shields; whom they prohibite to Exercise his Ministry, because he disowns their Authority, and does not observe the same Uniformity of Worship with them; from which Subjection and Compli-

ance all the Ministers of the Episcopal Communion are expressly exempted by the Act of Parliament which I have just now quoted. This Act of Exemption, in favour of the Episcopal Clergy, is ratified by several subsequent Acts of Parliament, *viz.* by the second Act of Parliament 1700, by the the third Act of the Parliament 1702, and by the second Act of the Parliament 1703.

It is plain therefore from the Words of the Act of Parliament which I have cited, that the Ministers of the Episcopal Communion are thereby declared, to be altogether independent on the Authority of the *Presbyterian* Assemblies, or Presbyteries; they are allowed to Exercise their Ministry without acknowledging their Jurisdiction, and are not tied up to the same Uniformity of Worship with them. They are not obliged to concur with the *Presbyterians* in abstaining from the Use of the Lord's Prayer, from the Use of the Doxology, because they are set Forms; they are not confined to make their solemn Addresses to God in raw indigested Expressions, nor in a rude indecent Posture of Body, altogether unbecoming Penitents and Suppliants to the Throne of Heaven; but they are left at Liberty to offer up their Prayers to God Almighty in Petitions framed and adapted to the Necessities of all Men in general, by the most learned and pious Fathers of the Church, and in the most humble Prostration of Body, such as becometh sinful Dust and Ashes, when they present themselves before the great Creator of Heaven and Earth.

But lest it should be said, that this Indulgence or Exemption, which I have just now mentioned, extends only to the *Episcopal* Ministers that are in Possession of Churches, I shall show that this Indulgence is granted to all the Ministers of the *Episcopal Communion* in general, whether they exercise their Ministry in Churches or Meeting-Houses. To make this appear I need only put down the words of the 16th. Act of the Parliament of Scotland held in the Year 1689. It is thereby Enacted, *That no Injury be offered by any Persons whatsoever, to any Minister of the Gospel, either of Church or Meeting-House, in the Possession and Exercise of their Ministry therein, they behaving themselves as becomes under the present Government.* Here is a General Protection and Toleration

Toleration, granted to all Ministers of the Gospel, whether in Church or Meeting-House, *Episcopal* as well as *Presbyterian*, and no other Qualification required; but to Live in a peaceable Subjection to the present Government.

Is not this, MY LORD, as ample and as Extensive an Indulgence as words can express. I appeal to Your Lordship, if the Indulgence which the Dissenters enjoy in *England*, and which they set up as a legal Establishment, nothing inferior to the National Religion, has Words of greater Force and Energy to Support it. Thus, MY LORD, I think I have sufficiently made out by the Acts of Parliament which I have Quoted, that the *Presbyterian* Ministers of *Scotland* have no manner of Authority or Jurisdiction over those of the *Episcopal* Communion, who are impower'd by Law to Exercise their Ministry without the Allowance and Approbation of the *Presbyterians*, and are not tied up to an Uniformity of Worship with them. So that the Reasons, on which the Sentence of the Presbytery of *Edinburgh* against Mr. *Greenshields* is Founded, fall to the Ground, and the Sentence is Null and Void.

In the next place, MY LORD, I shall enquire a little into the Proceedings of the Magistrates of *Edinburgh*, and see how they can justify their giving their Hand and Assistance to inforce this illegal Sentence of the *Presbytery*. The Sentence pronounced by the Ministers was of it self but a *Brutum Fulmen*, and might have past unregarded, they having no Legal Warrant for what they did, nor Power to put their Order in Execution. Mr. *Greenshields* being a Minister of the *Episcopal* Communion, and altogether independent on their Jurisdiction, was under the Protection of the Law to go on in the Exercise of his Ministry, notwithstanding of the *Presbyterian* Ministers Prohibition to the contrary, which he was obliged to regard no more than a Prohibition from the Court of *Rome*. But when the Magistrates of *Edinburgh* employ the Temporal Sword, to make the Thunder of the *Presbytery* effectual; when they lay violent Hands on a Man for not complying with what the Ministers have enjoined him; when they make use of the Queen's Name and Authority to cast a *Clergy-man* into Jail, for no other Crime, but that of Reading the *Liturgy* of the *Church of England*; here, MY LORD, Mr. *Greenshields* is attacked in a Sensible manner, in

in what is Dearest and most Precious to every Man, and what our Laws have been always tender of preserving. This, My LORD, is the Ground and Cause of the Complaint against the Magistrates of *Edinburgh*; the Liberty of the Subject invaded by them, the Laws violated, and her *Majesty's* Name and Authority abused.

I would gladly ask those Gentlemen, if they think themselves bound in Conscience, I'm sure in Law they are not, to pay a blind implicite Obedience to whatever their Ghostly Fathers require of them? Do they believe their Teachers to be infallible *in Cathedrâ*, so that they need not; or are they under such Subjection to them, as that they dare not, examine whether their Decrees be conformable, or contrary to Law? If the case be so, I'm sure the Government of the City of *Edinburgh* is in no safe Hands. For if it should but please the *Presbyterian* Ministers to issue forth an Order to morrow, that all Persons should take the Solemn League and Covenant, and the Magistrates think themselves obliged to make this their Order effectual, I'm afraid Your Lordship would soon hear of a great many Honest Loyal Gentlemen clapt up in our *Tolbooth*. If the Magistrates take upon them to do an unwarrantable thing, to execute an illegal Sentence, it is at their own Peril; and it will be no Justification for them to say, that they were ordered by their Teachers so to do. I know, My LORD, that it will be alledged in their Excuse, that by the 22d. Act of the Parliament of *Scotland* held in the Year 1695. All Magistrates are required to be Aiding and Assisting to the Ministers in the Exercise of their Ecclesiastical Jurisdiction. This Act provides against Intrusion into Churches; and declares, that whoever shall intrude themselves into Churches, without an orderly Call from the Parishioners, and a legal Admission by the *Presbytery*, shall be removed from the said Church, and be incapable of enjoying any other Church for the space of Seaven Years; and all Magistrates are thereby required, upon complaint from the *Presbytery*; to be Aiding and Assisting in the Removal of such Intruders. Your Lordship sees, what Shifts they are put to, to justify their unwarrantable Proceedings, when they have recourse to an Act of Parliament which has no manner of relation to the present Case of Mr. *Greenshield*s. Can they have the Face to pretend, that Mr. *Greenshield*s had intruded himself into any of their Churches, when he

he was quietly exercising his Ministry in a private Meeting House, under the Protection of the Law ?

But this, or any other Act whatsoever, which requires Magistrates to assist the Ministers in the Exercise of their Jurisdiction, does it empower them to assist the Ministers in matters in which they have no Jurisdiction ? Does it require them to give a helping Hand to the Ministers in every thing which they shall desire of them ? If this were the meaning or intent of any Act of Parliament, it would be to lodge the whole Coercive Power in the hands of the *Presbyterian* Ministers. For at this rate, they need only call before them any Gentleman whatsoever, whom they have a mind to vex, and charge him with some Crime, and then deliver him over into the hands of the Secular Power. The Magistrates, for their part, they must blindly obey what the Ministers dictate to them, because the Law requires them to be Assisting to them in the Exercise of their Jurisdiction : they must not enquire, whether the Ministers be acting beyond their Sphere ; they must not listen to the Complaint of a Subject, who is prosecuted by them contrary to Law ! No surely, this was never the intent of any Act of Parliament whatsoever. The Magistrates may assist the Ministers in the lawful Exercise of their Jurisdiction, when the Law requires them so to do ; but if they give them any Aid and Assistance in extending their Jurisdiction contrary to Law, in vexing and oppressing the Subject, it is at their own peril that they do it ; and they, as well as the Ministers, are liable to be punished for such illegal Proceedings.

MY LORD, I'll put a parallel Case in *England*. Suppose any of the Bishops Courts should cite before them a *Presbyterian* Teacher, and requires him to desist from Preaching, because he disowns the Bishop's Authority, because he introduces a new Form of Worship contrary to the *Act of Uniformity*. Would not the Party cited in this case plead the *Act of Toleration*, or *Exemption*, made in Favour of Dissenters ; and under the shelter of that Act think himself to be safe from any Prosecution. And should the Bishop's Official, notwithstanding of this Defence, proceed to a Censure, would the Civil Magistrate be any ways Aiding or Assisting to him in this matter ? Would he immediately, without any further Enquiry, Imprison the Dissenting Preacher for not complying with the Order of the Ecclesiastical Court ?

Court? Would not he rather issue a Prohibition, to stop all further Proceedings; and take care that the Dissenter should enjoy the Liberty and Protection which the Law indulges him? And should either the Magistrate, or the Bishop's Official, offer to vex or molest, and much more should they Imprison, any Dissenting Preacher, in open Defiance to the Law, I believe they would not easily escape a very severe Punishment. This is the very Case of Mr. *Greenfields*. The *Presbytery* call him before them for Preaching without their Authority. He pleads for his Defence, the Act of Toleration, which exempts all the *Episcopal* Ministers from the Jurisdiction of any of the *Presbyterian* Assemblies. They, in open Defiance to the Law Prohibit him the Exercise of his Ministry. And the Magistrates of *Edinburgh* throw him into Prison, for not complying with their Order, which they knew to be directly contrary to several Acts of Parliament.

I do not question, MY LORD, when this Cause comes to be heard at the Bar of Your Lordships House, but it will be clearly made out, that the Proceedings of the Magistrates of *Edinburgh* in this matter have been altogether Illegal and Unwarrantable; and that it will be found reasonable for the House of Peers to interpose such an Order, as may deter them, and other Magistrates, from Violating the Laws in such a Publick and Notorious manner for the future. This, MY LORD, seemes to be the more necessary, because the Magistrates of other Towns had begun Prosecutions, of the same Nature against the *Episcopal* Ministers who have Meeting Houses within their Districts, and have only stopt the fury of their Proceedings, till they see the event of Mr. *Greenfields* Appeal; which if the House of Lords should be of Opinion to dismiss, there would be no quarter given to any Minister of the *Episcopal Communion*, and especially to such who Read the *Common Prayer* to their Congregations. What incenses the *Presbyterians* the more on this occasion is, that they begin to perceive a much greater disposition among the Inhabitants of *Scotland*, to Receive the *Common Prayer* than ever they shewed before. In several parts of the Country, where the *English Liturgy* is Read in a Meeting-House, the Common People begin to be so in Love with that decent and reasonable Way of Worship, that they cannot bear any longer with the Nauseous Incoherent Stuff which they sometimes meet with in Extemporary Composures. And hence it is, MY LORD, that proceeds

all

all this Zeal and Fury against the Episcopal Ministers who read the English Service.

I shall now proceed, My Lord, to acquaint your Lordship with the Reasons on which the Lords of Council and Session went, in confirming the Sentence of Imprisonment, inflicted on Mr. *Greenfields* by the Magistrates of *Edinburgh*. Mr. *Greenfields* finding himself highly injured by the Magistrates, applies himself in the regular Course of Justice to the Lords of Council and Session, praying them to reverse his Sentence of Imprisonment, as being contrary to Law. When the Lords of Council and Session came to inquire into the Reasons on which the Sentences of the Presbytery and Magistrates of *Edinburgh* were grounded, they found that they were no sufficient legal Warrant for committing Mr. *Greenfields* to Prison. They knew, that the Laws did protect all Ministers of the Episcopal Communion in the Exercise of their Ministry, without any Dependance on the *Presbyterian* Jurisdictions. And therefore to support the Sentence, which they found to be ill grounded, they had recourse to another Expedient, which had not been thought of before: And that was, to deny the Validity of Mr. *Greenfields* Orders, as having been ordained by an *Exauctorate* Bishop; that is, a Bishop divested of the Power and Authority to ordain.

My Lord, I have all the Respect and Deference that is possible, for the Lords of Council and Session, knowing that that Bench is usually filled with Persons of great Integrity, as well as of great Abilities. But I cannot help taking notice, that in this Affair of Mr. *Greenfields* they have deviated from the Rules of their common and ordinary Practice. The Method of that Court, My Lord, is, when a Bill of Suspension, that is, a Petition for suspending the Execution of a Sentence or Decree, is preferred to them, to examine the Reasons on which the Sentence or Decree was grounded; and if they find them valid and sufficient, they pronounce the Sentence to be just and legal; but if the Reasons appear not to be sufficient, they declare the Sentence to be unjust and illegal, and stop the Execution of it. The Judges in this Case are not at liberty to find out new Reasons for supporting the Sentence, but are barely to consider and weigh the Reasons on which the Sentence was

pronounced. Your Lordship may easily judge whether the Lords of Council and Session have observed this their constant Practice in the present Case of Mr. *Greenshields*. The Presbytery of *Edinburgh* prohibit Mr. *Greenshields* the Exercise of his Ministry, because he does not own their Authority ; because he preaches without their Allowance ; because he introduces a new Form of Worship : They do not suspend him, because he is no Minister, because he is not lawfully ordained ; they saw his *Act of Orders*, and knew better things than to call his Ordination in question. The Magistrates of *Edinburgh* proceed on the same Reasons as the Presbytery had done : They commit Mr. *Greenshields* to Prison, not for being no Minister, nor for having taken his Orders from a Deprived Bishop ; but the Ground on which they imprison him, is for preaching without Leave from the Presbytery, for reading the *English* Liturgy to his Congregation.

But when this Sentence of Imprisonment came to be canvassed before the Lords of Council and Session, they saw at first Sight, that the Reasons on which the Ministers and Magistrates of *Edinburgh* had gone, were stark naught. They knew well enough, that the Laws allowed the Ministers of the Episcopal Communion to preach without asking leave from the *Presbyterians* ; they were sensible, that the reading of the *English* Service was no Crime, no Breach of any Law ; and therefore, according to the regular Course of their Practice, they ought to have declared the Sentence that was grounded on these Reasons to be illegal and unjust, and ought to have order'd the Prisoner to be set at Liberty. But instead of this, they bethought themselves of an Expedient to support the Sentence of Imprisonment, by furnishing the Ministers and Magistrates of *Edinburgh* with a new Reason for their Proceedings, which they themselves had never dream'd of ; and that was, by declaring him to be no Minister, because he was ordained by an Excommunicate Bishop. The Question about the Validity of his Ordination, methinks, would have come in more naturally before the Presbytery, it being a Matter of Spiritual Cognizance, but the Ministers were not quite so ignorant in Ecclesiastical Affairs as to call his Ordination in question ; they knew that that Argument had no Foundation, and therefore they proceeded against him as a Transgressor of the Temporal Laws. On the other

other hand, the Judges, who are the Interpreters of the Law, they found no Temporal Law that he had transgress'd, and therefore they proceeded against him as an Offender against the Spiritual Laws. Thus, while the different Judicatories were prosecuting him on different Grounds, and for different Reasons, and each of them unfortunately going on the Reasons which they knew least of, on the Grounds which did not so properly belong to their Cognizance, the Prisoner was detained in Custody, to the great Prejudice of his Health, and of his Family, till he was forced to apply to the Justice of the House of Peers for Relief.

But, MY LORD, the Expedient which the Lords of Council and Session had recourse to, for supporting the Sentence of Imprisonment against Mr. *Greenfields*, will appear to your Lordship to be as unreasonable, as their Practice in going upon it was irregular. They pretend, that the Government of the Church by Bishops being abolished by the present Laws of Scotland, the Bishop of *Ross*, who ordained Mr. *Greenfields*, had no Power to confer Holy Orders; and that therefore Mr. *Greenfields* is no Minister, and has no Right to exercise the Ministerial Function. MY LORD, I think there needs no great Strength of Reasoning to shew the Weakness of this Argument. That Bishops and Presbyters derive their Spiritual Power from the Church, by Imposition of Hands, and not by any Grant from the Civil Magistrate, is evident from the Practice of all *Christian* Churches. And this Spiritual Power which is conferred by the Church, can be taken away by no other Authority but that which gave it. The State, if it is in Opposition to the Church, may endeavour to hinder the Pastors of the Church, from exercising their Ministerial Function, by inflicting Punishments on such as do not comply with their Order; but they cannot divest them of their Spiritual Power, they cannot invalidate the Acts done by virtue of a Power, which is derived from God, and not from the Civil Magistrate. The Act of Parliament abolishing Episcopacy in Scotland, did take away from the Bishops all the Temporalities annexed to their Bishopricks, which they held of the Crown; but it did not pretend to deprive them, neither indeed could it, of their Spiritual Power, which they derived from the Church, and which none but the Church could take from them. They might expose themselves

to the Penalties of Temporal Laws by exercising their Holy Function ; but still the Ministerial Acts which they performed were valid, and have been always acknowledged as such by the Bishops of *England* and *Ireland*. How many Clergy-men ordained by the Bishops of *Scotland* since their Deprivation, have been admitted to Cures in *England* ; and was not Mr. *Greenshield's* Ordination approved of by his Grace the Lord Archbishop of *Armagh*, in whose Diocese he exercised the Office of a Minister for the Space of Twelve Years.

But should it be granted, that the Act of Parliament abolishing Episcopacy in *Scotland*, had divested the Bishop of the Spiritual Character of a Bishop, which will never be allowed by any who know the Difference between Ecclesiastical and Secular Offices, between Spiritual and Temporal things ; yet it was never pretended, that the Bishops of *Scotland*, after their Deprivation, might not exercise the Office of a Presbyter. And if they be but allowed to be Presbyters, that is sufficient, according to the Tenets of the *Presbyterians*, to intitle them to ordain other Presbyters. The *Presbyterian* Ministers were sensible of all this, and therefore they did not pretend to find fault with Mr. *Greenshields* upon the Account of his Ordination.

I hope by this time your Lordship is sufficiently convinced of the Injustice and Illegality of all this Proceeding against Mr. *Greenshields*. I have proved, that the *Presbyterian* Ministers, according to the present Laws of *Scotland*, have no manner of Authority or Jurisdiction over any of the Episcopal Communion, and consequently that the Sentence of the Presbytery of *Edinburgh* against Mr. *Greenshields* is null and void. I have shewn, that the Magistrates of *Edinburgh*, by imprisoning Mr. *Greenshields*, without convicting him of any Crime, or Breach of any Law, are guilty of arbitrary and illegal Practices, totally destructive of the Liberty and Freedom of the Subject. And I think I have sufficiently made it appear, that the Lords of Council and Session, by refusing Mr. *Greenshields* the Protection of the Laws against those illegal Practices, have given him but too just a Ground to appeal for Justice to a higher Tribunal.

I know, M Y L O R D, it will be strongly urged by Mr. *Greenshield's* Adversaries, that there lies no Appeal in this Matter to the

the House of Peers ; that this being an Ecclesiastical Cause, is cognizable only in an Ecclesiastical Judicatory ; that if Mr. *Greenshields* had thought himself injured by the Presbytery of *Edinburgh*, he might have appealed to a Provincial or General Assembly. But the Answer to this is obvious. If no body had meddled with Mr. *Greenshields* besides the Presbytery of *Edinburgh*, your Lordships would not have been troubled with any Appeal on this Score. Mr. *Greenshields* would have continued to go on quietly in the Exercise of his Ministry, notwithstanding of their Prohibition to the contrary, knowing that he was under the Protection of the Law, and that the *Presbyterian* Ministers had no Jurisdiction over him. But his chief Complaint is against the Magistrates of *Edinburgh*, for imprisoning him, it is from their Sentence of Imprisonment that he appeals to the Lords of Council and Session ; it was they who were his adverse Party in Judgment before that Court of Justice ; it was they who appeared, and who answered his Petition ; and it is they who are now the Party Defendant in the Appeal before the House of Lords. And the principal Question in Debate, is, Whether Mr. *Greenshield's* Imprisonment was legal or illegal ? Will any Body pretend, that this an Ecclesiastical Cause, and that it is triable only in an Ecclesiastical Court ?

The Ministers of the Presbytery, after they had pass'd their Censure on Mr. *Greenshields*, they deliver'd him over to the Magistrates, leaving them to proceed against him in what manner they thought best. They did not pretend to retain the Cause still before them as being of Ecclesiastical Cognizance ; they did not offer to proceed against him by any Ecclesiastical Censures, as knowing that their Sentence of Excommunication would have no Effect upon a Person who is not of their Communion, considering that their Excommunications are not now accompanied with any Temporal Penalties. And therefore the Ministers of the Presbytery, when they had thunder'd out their Censure against Mr. *Greenshields*, they thought themselves *functi Officio*, as having done all against him that was in their Power, and so dismissed him, having nothing more to say to him. But suppose the Presbytery had thought fit to retain still this Cause of Mr. *Greenshields*, and had proceeded against him in an Ecclesiastical Manner, must he have been confined to seek his Redress only from a Provincial and General Assembly ? If the Ministers

* All Civil
Pains following
upon Sentences of Ex-
communication are repeal-
ed by the 28th
Act of Parlia-
ment. 1690.

take

take upon them to act in a direct Contradiction to the Laws of the Kingdom, must the Subject apply no where else for Relief but to the Persons who are his Adversaries and Oppressors? Would the *Presbyterian* Ministers be both Judges and Parties in the same Cause? The Dispute between Mr. *Greenshields* and them, is, Whether he, as an Episcopal Minister, has not a Right to exercise his Ministerial Function, independently of their Jurisdiction. In this Dispute all the *Presbyterian* Ministers are Parties; and were the Question to be decided by a General or Provincial Assembly, it would, I fear, go against Mr. *Greenshields*, let him have never so many Acts of Parliament on his Side. And it has been the constant Practice in *Scotland*, ever since the Revolution, for the Episcopal Ministers, when they were persecuted and oppressed by the *Presbyterian* Synods or Assemblies, to apply themselves for Redress to the Privy Council. And the Lords never remitted them back to those Judicatories, on pretence that their Appeal was from an Ecclesiastical Court, or their Cause of Ecclesiastical Cognizance.*

* By Act 1. Parl. 8. K. J. VI. our Kings & their Council, are declared to be competent Judges of all Persons, Spiritual or Temporal, and in all Causes whatsoever. And it is Treason for any person to decline their Jurisdiction.

I would only ask those Gentlemen who urge so strenuously to have this Appeal dismissed, as being only of Ecclesiastical Cognizance, what the Dissenters in *England* would say, if any of their Teachers were prosecuted in the Ecclesiastical Courts, for preaching without the Bishop's License, and for not using the Common Prayer. Would they tamely bear with such a Prosecution; and if Sentence should pass against them, would they content themselves to sue for Redress from one Ecclesiastical Court to another, because it is an Ecclesiastical Cause? Would not they in this Case presently fly to the Temporal Magistrate for Protection, and get the Courts of *Westminster-Hall* to issue out a Prohibition, to stay all Proceedings against them? But, as I said before, Mr. *Greenshield's* Case is no Ecclesiastical Cause, nor is his Appeal from an Ecclesiastical Judicatory. He appeals to the House of Peers from the Lords of Council and Session at *Edinburgh*; and the Cause on which he appeals, is a Cause of false Imprisonment; and the Parties against whom he brings his Appeal, are the Magistrates of *Edinburgh*.

Thus, MY L O R D, I hope it will appear to your Lordship, and to the whole House of Peers, that this Appeal of Mr. *Greenshields* is well and duly lodged before you. And after this

this Matter has had a full Hearing, as there is no Doubt but your Lordships will do Justice in your Judicial Capacity to Mr. *Greenfields* in particular; so it would be of great Comfort and Relief to all those of the Episcopal Communion in general, if your Lordships did exert your selves also in your Legislative Capacity, by making the present Laws of *Scotland*, by which they are intitled to the free Exercise of their Worship, more Effectual and more Sacred for the future; that no Magistrate, or other Person, may dare to disturb the Episcopal Ministers in the Exercise of their Pastoral Function. I am, My L O R D, with great Respect,

Your Lordship's

most Obedient, and

Edinburgh Janu-
ary 18th 17¹²₁₁.

most Humble Servant.

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6 MA 50

Dear Father

Dear Mother

Dear Father

